



[SEQ CHAPTER \h \r 1]**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**

Washington, D.C. 20460

OFFICE OF
ADMINISTRATOR

MEMORANDUM

SUBJECT: Updated Recusal Statement

FROM: Andrew R. Wheeler
Administrator

TO: Assistant Administrators
General Counsel
Inspector General
Regional Administrators

As indicated in my prior recusal statement signed on May 24, 2018, I agreed to update my recusal statement if there were any changes to my EPA duties. On February 28, 2019, I became Administrator and have continued to consult with the Office of General Counsel/Ethics (OGC/Ethics) about my ethics obligations. This memorandum reiterates my existing and ongoing ethics obligations as described in my May 24, 2018 recusal statement, clarifies some of those obligations, and adds a new voluntary recusal for matters related to the Pebble Mine.

FINANCIAL CONFLICTS OF INTEREST

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have consulted with OGC/Ethics and been advised that I do not currently have any financial conflicts of interest but will remain vigilant and notify OGC/Ethics immediately should my financial situation change.

OBLIGATIONS UNDER EXECUTIVE ORDER 13770

Pursuant to Section 1, Paragraph 6 of the Executive Order, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former employer, **Faegre Baker Daniels LLP**, or any former client to whom I provided legal or consultative services during the past two years is a party or represents a party. I have been advised by OGC/Ethics that the term “former client” is defined as any person for whom I have personally provided services to between April 20, 2016 and April 20, 2018, which is the two year period prior to the date of my appointment.¹ I understand that my recusal lasts for two years from the date that I joined federal service.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties representing a diversity of viewpoints. If my former employer or a former client is present, then I understand that, generally speaking, at least four other parties should be present to ensure that a diversity of viewpoints is represented and not the same united perspective.

Because I was formerly a federally registered lobbyist, I understand that I am also subject to the provisions of Section 1, paragraph 7 of the Executive Order. For a period of two years, I will not participate in any particular matter on which I lobbied in the preceding two years, nor will I participate in the specific issue area in which that particular matter falls.² This recusal encompasses issues that I lobbied on before EPA as well as before other federal agencies during the preceding two years including, for example, Section 202(c) of the Federal Power Act.

Set forth below are my former clients identified in consultation with OGC/Ethics that have or may have environmental interests that could potentially arise with respect to my duties here at EPA,³ as well as the specific issues areas from which I am recused:

¹ See Exec. Order 13770, Section 2(i) and the Office of Government Ethics (OGE) Legal Advisory DO-09-011 (March 26, 2009), which applies to Exec. Order 13770 pursuant to OGE Legal Advisory LA-17-03 (March 20, 2017).

² I am advised by OGC/Ethics that Section 1, paragraph 7 of the Executive Order applies to both “particular matters involving specific parties and “particular matters of general applicability,” but not the broader term, “matters” (e.g., the Clean Power Plan). See OGE Legal Advisory LA-17-03 (March 20, 2017) which defines “specific issue area” to mean a “particular matter of general applicability.”

³ For any former client that is not listed, I understand that I am personally obliged not to participate in specific party matters for the duration of my ethics obligations.

RECUSAL LIST PURSUANT TO EXECUTIVE ORDER 13770 In effect until April 20, 2020 ⁴	
FORMER EMPLOYER: Faegre Baker Daniels LLP	
FORMER CLIENTS: Murray Energy Sargento Food Inc. Underwriters Laboratories Energy Fuels Resources Inc.	Growth Energy International Paper (including Superfund sites) Martin Farms Xcel Energy
FORMER LOBBYING ISSUES: Energy Star Section 202(c) of the Federal Power Act	
ADDITIONAL VOLUNTARY RECUSAL: Matters related to the Pebble Mine near Bristol Bay, Alaska ⁵	

SUPERFUND SITES

To avoid any concerns about my ethical obligations, I am affirming that I will not participate in matters related to any of the sites Superfund sites at which my former client, International Paper, is a potentially responsible party. Consistent with my obligations under the federal ethics regulations and Executive Order 13770, I will not participate in matters for those sites or any other at which my former client is involved until after April 20, 2020.

PEBBLE MINE

Ex. 5 Deliberative Process (DP)

⁴ Due to a typographical error in the May 24, 2018 recusal statement, this date has been changed to accurately reflect two years from the date that I was sworn into federal service.

⁵ Although not necessarily required, I am recusing myself from matters related to the Pebble Mine, including any associated litigation, settlement agreement, and permitting, to avoid the appearance of any ethical concerns in the role of Administrator.

Ex. 5 Deliberative Process (DP)

Administrator, I am voluntarily recusing myself from participation in any matters related to the Pebble Mine for the duration of my EPA tenure.

VOLUNTARY RECUSAL	
SUBJECT MATTER:	DESCRIPTION:
Matters related to the Pebble Mine near Bristol Bay, Alaska	Includes any associated litigation, settlement agreement, and permitting

OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS

Pursuant to federal ethics rules, I understand that I have a one-year cooling off period with any organization in which I was an active participant. For one year after my resignation from the **National Energy Resources Organization (NERO)**, I am prohibited from participating personally and substantially in any particular matter involving specific parties in which NERO is a party or represents a party, unless I am first authorized by OGC/Ethics to participate, pursuant to 5 C.F.R. § 2635.502(d). That said, I acknowledge that NERO does not itself lobby or represents parties other than itself.

RECUSAL LIST FEDERAL ETHICS OBLIGATIONS	
NAME OF ENTITY:	DATE WHEN RECUSAL ENDS:
National Energy Resources Organization (NERO)	One year after my resignation but no later than April 20, 2019

ATTORNEY BAR OBLIGATIONS

Pursuant to my obligations under my bar rules, I recognize that I am obliged to protect the confidences of my former clients. I also understand that I cannot participate in any matter that is the same as or substantially related to the same specific party matter that I participated in personally and substantially while in private practice, unless my bar provides for and I first obtain informed consent and notify OGC/Ethics.

SCREENING ARRANGEMENT

In order to ensure that I do not participate in matters relating to any of the entities listed above, I will instruct Michael Molina, Deputy Chief of Staff, to assist in screening EPA matters directed to my attention that involve those entities. All inquiries and comments involving the entities on my recusal list should be directed to Mr. Molina without my knowledge or involvement until after my recusal period ends.

If Mr. Molina determines that a particular matter will directly involve any of the entities

(b) (6), (b) (5)(b) (6), (b) (5)(b) (6), (b) (5)(b) (6), (b) (5)(b) (6), (b) (5)

or matters listed on my “specific party” recusal list, then he will refer it for action or assignment to another, without my knowledge or involvement. In the event that he is unsure whether an issue is a particular matter from which I am recused, then he will consult with OGC/Ethics for a determination. I will provide a copy of this memorandum to my principal subordinates with a copy to David Cozad, Acting Designated Agency Ethics Official, and Justina Fugh, Director, Ethics Office.

UPDATE AS NECESSARY

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes to my screening arrangement, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Ryan Jackson, Chief of Staff
Michael Molina, Deputy Chief of Staff
David Cozad, Acting Designated Agency Ethics Official
Justina Fugh, Director, Ethics Office

Message

From: Molina, Michael [molina.michael@epa.gov]
Sent: 3/19/2019 1:58:34 PM
To: adm15.arwheeler.email [adm15.arwheeler.email@epa.gov]
CC: Jackson, Ryan [jackson.ryan@epa.gov]
Subject: FW: as requested
Attachments: Wheeler updated recusal statement 3-19-19.docx

From: Fugh, Justina
Sent: Tuesday, March 19, 2019 9:54 AM
To: Molina, Michael <molina.michael@epa.gov>
Subject: as requested

Michael,

Here you go. I know he's meeting with the Director of the Office of Government Ethics today, so this will be useful for him to be able to say he's done.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Appointment

From: Leopold, Matt (OGC) [Leopold.Matt@epa.gov]
Sent: 3/11/2019 2:50:50 PM
To: Adm15Wheeler.Calendar [Adm15Wheeler.Calendar@epa.gov]
Subject: Accepted: Meeting with Emory Rounds (Director of the Office of Government Ethics) and Chip Christopher (Deputy Director of Compliance)
Location: Administrator's Office
Start: 3/19/2019 6:30:00 PM
End: 3/19/2019 7:00:00 PM
Recurrence: (none)

Appointment

From: Fotouhi, David [Fotouhi.David@epa.gov]
Sent: 3/15/2019 4:26:03 PM
To: Adm15Wheeler.Calendar [Adm15Wheeler.Calendar@epa.gov]
Subject: Accepted: Meeting with Emory Rounds (Director of the Office of Government Ethics) and Chip Christopher (Deputy Director of Compliance)
Location: Administrator's Office
Start: 3/19/2019 6:30:00 PM
End: 3/19/2019 7:00:00 PM
Show Time As: Busy

Appointment

From: Jackson, Ryan [jackson.ryan@epa.gov]
Sent: 3/15/2019 9:31:05 PM
To: Adm15Wheeler.Calendar [Adm15Wheeler.Calendar@epa.gov]
Subject: Accepted: Meeting with Emory Rounds (Director of the Office of Government Ethics) and Chip Christopher (Deputy Director of Compliance)
Location: Administrator's Office
Start: 3/19/2019 6:30:00 PM
End: 3/19/2019 7:00:00 PM
Show Time As: Busy

Message

From: Humphreys, Hayly [humphreys.hayly@epa.gov]
Sent: 3/18/2019 10:43:10 PM
Subject: Calendar for Administrator Wheeler: Tuesday, March 19, 2019

**Calendar for Administrator Wheeler
Tuesday, March 19, 2019**

- 8:30 AM – 9:30 AM Scheduling Meeting
Administrator's office
- 9:30 AM – 10:00 AM Weekly Check-in with Susan Bodine
Administrator's office
- 10:00 AM – 10:40 AM Briefing: OAR General Discussion
Administrator's Office
- 10:45 AM – 11:15 AM CBS Interview
Welcome area outside of Administrator's office
- 12:00 PM – 1:30 PM Executive Planning
- 1:30 PM – 2:00 PM Call with Mary Neumayr
Administrator's office
- 2:30 PM – 3:00 PM Meeting with Emory Rounds (Director of the Office of Government Ethics) and
Chip Christopher (Deputy Director of Compliance)
Administrator's Office
- 3:00 PM – 3:45 PM Pre-Brief: Travel to OH and CO
Administrator's Office
- 3:45 PM – 4:00 PM Depart for White House
- 4:00 PM – 4:30 PM Meeting with Brooke Rollins
White House
- 4:45 PM – 5:00 PM Conference Call with Congresswoman McCollum

Message

From: Dickerson, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D0440D9F06994021827E0D0119126799-DICKERSON,]
Sent: 4/10/2019 5:04:28 PM
To: Elizabeth White (white.elizabeth@epa.gov) [white.elizabeth@epa.gov]
Subject: Administrator's Calendar for Feb and March 2019
Attachments: Acting Administrator Wheeler Calendar February 1 - 28 2019.pdf; Administrator Wheeler Calendar March 1 - 31 2019.pdf

Hi Beth

Here you go. Thanks.

Aaron Dickerson
Senior Advisor
Office of the Administrator
U.S. EPA

Message

From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 3/19/2019 1:53:53 PM
To: Humphreys, Hayly [humphreys.hayly@epa.gov]; Eby, Natasha [eby.natasha@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]
Subject: RE:

Perfect.

From: Humphreys, Hayly
Sent: Tuesday, March 19, 2019 9:51 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Eby, Natasha <eby.natasha@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Subject: RE:

Yes, we were told David was attending.

Hayly Humphreys
Office of the Administrator
U.S. EPA

From: Jackson, Ryan
Sent: Tuesday, March 19, 2019 9:46 AM
To: Eby, Natasha <eby.natasha@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Humphreys, Hayly <humphreys.hayly@epa.gov>
Subject: RE:

Do you know who is attending the Rounds meeting from OGE?

David, are you attending the OGE meeting today?

From: Eby, Natasha
Sent: Tuesday, March 19, 2019 9:44 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Humphreys, Hayly <humphreys.hayly@epa.gov>
Subject: RE:

Will do, thanks!

From: Jackson, Ryan
Sent: Tuesday, March 19, 2019 9:43 AM
To: Eby, Natasha <eby.natasha@epa.gov>; Humphreys, Hayly <humphreys.hayly@epa.gov>
Subject:

I meant to place this in Andrew's binder last night for the Emory Rounds meeting. Will you ensure he receives this?

Ryan Jackson

Chief of Staff
U.S. Environmental Protection Agency
(202) 564-6999

Message

From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 3/19/2019 1:42:35 PM
To: Eby, Natasha [eby.natasha@epa.gov]; Humphreys, Hayly [humphreys.hayly@epa.gov]
Attachments: OGE meeting.docx

I meant to place this in Andrew's binder last night for the Emory Rounds meeting. Will you ensure he receives this?

Ryan Jackson
Chief of Staff
U.S. Environmental Protection Agency
(202) 564-6999

Ethics and openness steps

Doubled size of EPA's ethics office from 3 FTE to 6. This doesn't count Dave Cozad our Agency's Designated Ethics Officer (DEO). OGC Ethics will now have sufficient employees to cover for each other in the case of emergency and can start working on other items, such as updating advisory opinions, supplemental regulations, and orders, as well as plan for the sustainability of ethics at EPA in the long term.

Once starting as Acting Administrator, you issued the following new memos agency-wide nearly each week.

Message to EPA Employees on Equal Employment Opportunity, July 31, 2018

Message to EPA Employees on Public Participation and Transparency in EPA Operations "Fishbowl Memo", August 2, 2018

Message to EPA Employees on Cooperating with EPA's Inspector General, August 8, 2018

Message to EPA Employees on Anti-Harassment Policy, August 16, 2018

Message to EPA Employees on Elevating Human Health and Environmental Risks, October 4, 2018

Message to EPA Employees on Whistleblower Protection / Prohibited Personnel Practices, October 25, 2018

Message to EPA Employees on Freedom of Information Act (FOIA) Implementation, November 13, 2018

Message

From: Abboud, Michael [abboud.michael@epa.gov]
Sent: 3/20/2019 2:56:33 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]; Schiermeyer, Corry [schiermeyer.corry@epa.gov]; Konkus, John [konkus.john@epa.gov]; Molina, Michael [molina.michael@epa.gov]
CC: Hewitt, James [hewitt.james@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]
Subject: RE: Administrator Wheeler meeting with Office of Government Ethics Director Rounds

Perfect will send.

From: Jackson, Ryan
Sent: Wednesday, March 20, 2019 10:50 AM
To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Konkus, John <konkus.john@epa.gov>; Molina, Michael <molina.michael@epa.gov>
Cc: Hewitt, James <hewitt.james@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>
Subject: RE: Administrator Wheeler meeting with Office of Government Ethics Director Rounds

yep

From: Schiermeyer, Corry
Sent: Wednesday, March 20, 2019 10:39 AM
To: Abboud, Michael <abboud.michael@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Konkus, John <konkus.john@epa.gov>; Molina, Michael <molina.michael@epa.gov>
Cc: Hewitt, James <hewitt.james@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>
Subject: RE: Administrator Wheeler meeting with Office of Government Ethics Director Rounds

See if that works...

DRAFT: "Administrator Wheeler met with Director Rounds, as is routinely done by Agency and Department heads, to introduce himself in his new position, and establish a strong relationship with the Office of Government Ethics." – EPA spokesman

From: Abboud, Michael
Sent: Wednesday, March 20, 2019 10:33 AM
To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Konkus, John <konkus.john@epa.gov>; Molina, Michael <molina.michael@epa.gov>
Cc: Hewitt, James <hewitt.james@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>
Subject: RE: Administrator Wheeler meeting with Office of Government Ethics Director Rounds

This work?

DRAFT: "Administrator Wheeler met with Director Rounds to introduce himself in his new position, and establish a strong relationship with the Office of Government Ethics." – EPA spokesman

From: Schiermeyer, Corry
Sent: Wednesday, March 20, 2019 10:29 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Konkus, John <konkus.john@epa.gov>; Molina, Michael <molina.michael@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; McFaul, Jessica

<mcfaul.jessica@epa.gov>

Subject: RE: Administrator Wheeler meeting with Office of Government Ethics Director Rounds

Thank you Ryan.

Michael/James...please tweak into a brief statement that we can provide. I think we need to be clear this is routine and Director Rounds is meeting with everyone.

Thank you!

From: Jackson, Ryan

Sent: Wednesday, March 20, 2019 10:23 AM

To: Konkus, John <konkus.john@epa.gov>; Molina, Michael <molina.michael@epa.gov>

Cc: Abboud, Michael <abboud.michael@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>

Subject: RE: Administrator Wheeler meeting with Office of Government Ethics Director Rounds

Sure. We, of course, are not going to be specific as possible nor give a readout of the meeting. This was simply an introductory meeting which Mr. Rounds is conducting with all agency heads. It lasted about 30 minutes where they had a great conversation to establish a good working relationship.

From: Konkus, John

Sent: Wednesday, March 20, 2019 10:07 AM

To: Molina, Michael <molina.michael@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>

Cc: Abboud, Michael <abboud.michael@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>

Subject: FW: Administrator Wheeler meeting with Office of Government Ethics Director Rounds

Flagging...

From: Kevin Bogardus <kbogardus@eenews.net>

Sent: Wednesday, March 20, 2019 9:31 AM

To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Konkus, John <konkus.john@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Press <Press@epa.gov>

Subject: Administrator Wheeler meeting with Office of Government Ethics Director Rounds

Hey everyone,

It's Kevin Bogardus with E&E News.

I'm working on a story about Administrator Wheeler meeting with Office of Government Ethics Director Emory Rounds yesterday, according to this tweet by OGE (<https://twitter.com/OfficeGovEthics/status/1108113892373348353>). I had a few questions about this, which are:

■ What did Administrator Wheeler and Director Rounds discuss in their meeting yesterday? Please be specific as possible. Any kind of readout of the meeting would be helpful.

■ Did Administrator Wheeler and Director Rounds discuss in their meeting yesterday any of the previous OGE correspondence related to Administrator Wheeler (https://www.eenews.net/assets/2018/09/18/document_gw_01.pdf) or related to former EPA Administrator Scott Pruitt (https://www.eenews.net/assets/2018/04/09/document_gw_07.pdf) and https://www.eenews.net/assets/2018/06/15/document_pm_03.pdf)?

Please get back to me as soon as possible. My deadline is 12:30 pm EST today but the sooner you get back to me, the more it helps my reporting. Thank you for your help.

Kevin Bogardus

E&E News reporter

kbogardus@eenews.net

202-446-0401 (p)

202-247-7844 (c)

202-737-5299 (f)

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Message

From: Clarke, Victoria [clarke.victoria@epa.gov]
Sent: 3/12/2019 7:56:28 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]
CC: Fugh, Justina [Fugh.Justina@epa.gov]; Cozad, David [Cozad.David@epa.gov]; Molina, Michael [molina.michael@epa.gov]
Subject: Upcoming Meeting Between OGE and Administrator Wheeler
Attachments: OGE 2017 Environmental Protection Agency Final Report.pdf; Presentation to RCs 3-7-19.pptx

Hi Ryan!

It was so lovely to meet you (finally) in person this afternoon! As promised, I'm providing you with some informational material to help prepare you and the Administrator for the meeting with Director Emory Rounds of the Office of Government Ethics (OGE) on March 19, 2019 at 2:30 pm. OGE's Deputy Director for Compliance, Chip Christopher, should also be in attendance.

As you already know, Director Rounds has been meeting with the heads of executive branch agencies to convey the importance of ethical leadership. He's already spoken to the Secretaries at the Departments of Defense, Health and Human Services, Housing and Urban Development, and Transportation, and now he's speaking to our Administrator.

We anticipate that Director Rounds may suggest that the Administrator issue a strong statement about his commitment to ethics at EPA. Justina has mentioned that possibility to Mr. Wheeler in the past, and he indicated that he would be amenable to doing so once he was officially confirmed.

In addition, we anticipate that Director Rounds may talk about the robustness of EPA's ethics program, including remedies that EPA has taken to address the deficiencies that OGE found in its 2017 compliance report. I've attached OGE's report here. We think that EPA has a positive response to that issue, should it arise, particularly given the fact that you personally committed to double the ethics staff in size, from just 3.0 FTE to now 6 FTE. We've provided our most recent ethics presentation which overviews all of the work that OGC Ethics does, as well as our future plans.

To help provide context to what EPA is doing to commit to ethics, please consider the following:

OGE Report	What EPA has done
With its 2 full-time and 2 part-time employees (3 FTEs total), OGC Ethics had insufficient staff to properly administer the agency's ethics program, provide oversight to unsupervised deputy ethics officials, and survive shortfalls in the event of medical emergencies, leave, retirements, and other workplace changes.	OGC Ethics presently has 5.5 working FTEs, with an additional FTE in the process of being hired. As such, OGC Ethics will now have sufficient employees to cover for each other in the case of emergency and work force changes. Additionally, we now have sufficient staff to start working on other critical items, such as updating our advisory opinions, supplemental regulations, and order, as well as plan for the sustainability of ethics at EPA in the long term.
Of their sample, OGE noted that deputy ethics officials were not accurately reviewing confidential financial disclosure reports (Form 450), nor were those reports being filed timely by the filers. This was true not only of	With more employees, OGC Ethics can provide greater oversight to the deputy ethics officials as to how they manage review of confidential disclosure reports and trainings.

regular EPA employees, but also Special Government Employees.

Additionally, Special Government Employees were not receiving the ethics training that they needed from their deputy ethics officials.

We are also investing in technology to improve quality of (ethics) life at EPA. This includes an electronic system to make the filing and review of confidential financial disclosure reports easier, more efficient, and more accessible to all EPA employees and their DEOs.

If you have any questions, please don't hesitate to reach out!

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

Ethics Program Review

U.S. Environmental Protection Agency

Report No. 17-16
March 2017

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Objectives, Scope and Methodology

Objectives: OGE provides overall leadership and oversight of the executive branch ethics program designed to prevent and resolve conflicts of interest. The Ethics in Government Act gives OGE the authority to evaluate the effectiveness of executive agency ethics programs.¹ OGE uses this evaluation authority largely to conduct reviews of agency ethics programs. The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating (1) agency compliance with ethics requirements as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

Scope: OGE's review focused on the ethics program of the U.S. Environmental Protection Agency (EPA) headquarters, which includes the Office of the Administrator and 12 other main headquarters offices. Specifically, OGE evaluated the performance of the program at 24 individual offices under 6 main offices at headquarters.² The offices reviewed are listed in Table 1 below.

Methodology: To assess the EPA headquarters ethics program, OGE examined a variety of documents including the EPA response to OGE's 2015 Annual Agency Ethics Program Questionnaire, written procedures for administering the program, samples of public and confidential financial disclosure reports filed in 2015, ethics training materials, and a sample of the ethics advice and counseling provided to employees. OGE also met with agency officials to clarify the information gathered, follow up on issues identified during the review, and discuss ethics program operations in further detail.

¹ See title IV of the Ethics in Government Act, 5 U.S.C. app. § 402 and 5 C.F.R. part 2638.

² In order to further evaluate EPA's ethics program, OGE intends to conduct reviews at select EPA regional offices later in calendar year 2017.

Table 1. EPA Offices Reviewed

Main Headquarters Offices	Offices within Main Headquarters Offices
Office of the Administrator (OA)	Immediate Office (IO) Office of Public Engagement and Environmental Education (OPEEE) Office of Homeland Security (OHS) Office of Congressional and Intergovernmental Relations (OCIR) Office of Public Affairs (OPA) Office of Sustainable Communities in the Office of Policy (OP/OSC) Office of Small Business Programs (OSBP) Science Advisory Board (SAB)
Office of Air and Radiation (OAR)	Office of Atmospheric Programs (OAP) Office of Air Quality Planning and Standards (OAQPS) Office of Radiation and Indoor Air (ORIA)
Office of Land and Emergency Management (OLEM)	Office of Brownfields and Land Revitalization (OBLR) Office of Resource Conservation and Recovery (ORCR) Office of Superfund Remediation and Technology Innovation (OSRTI)
Office of Enforcement and Compliance Assurance (OECA)	Office of Criminal Enforcement, Forensics and Training (OCEFT) Office of Federal Activities (OFA) Office of Site Remediation Enforcement (OSRE)
Office of Chemical Safety and Pollution Prevention (OCSPP)	Office of Pesticides Program (OPP) Office of Science Coordination and Policy (OSCP)
Office of Research and Development (ORD)	Immediate Office (IOAA) Western Ecology Division of the National Health and Environmental Effects Research Laboratory (NHEERL/WED) Water Supply and Water Resources Division of the National Risk Management Research Laboratory (NRMRL/WSWRD) Office of the Science Advisor (OSA) Office of Science Policy (OSP)

Agency Background

EPA is headed by a presidentially appointed, Senate-confirmed (PAS) Administrator who is supported by a Deputy, 5 Associates, 12 Assistants (including the positions of General Counsel, Inspector General, and Chief Financial Officer), and 10 Regional Administrators. EPA has approximately 15,000 employees. The mission of the EPA is to protect human health and the environment.

EPA's ethics program is managed overall by the Office of General Counsel (OGC). The Principal Deputy General Counsel is the Designated Agency Ethics Official (DAEO). The Senior Counsel for Ethics is the Alternate DAEO (ADAEO) and, effective December 2016, supervises the EPA ethics office and oversees the day-to-day operations of the ethics program. The ADAEO is assisted by a staff of one full-time and two part-time ethics officials and, since December 2016, is assisted by an additional full-time ethics official who was appointed to a two-year term. The DAEO, ADAEO and the ethics officials in OGC, taken together, are designated as 'OGC Ethics' and will be referred to as such throughout this report.

OGC Ethics provides ethics guidance and programmatic oversight to more than 100 deputy ethics officials located throughout the Agency, both at headquarters and regional offices. In addition, the office is responsible for administering the public financial disclosure system EPA-wide, creating and delivering training, maintaining the ethics intranet site, and providing all other ethics services directly to OGC and to select offices in the Office of the Administrator.

Each main office within headquarters has a Deputy Ethics Official (DEO), sometimes assisted by an Assistant DEO (ADEO), who has been delegated the responsibility of administering most elements of the ethics program for that office. These elements include managing the confidential financial disclosure system, distributing and tracking ethics training, advising employees on the ethics rules, approving outside activities, and providing ethics services to the special Government employees (SGEs).³

In order to fulfill its responsibilities, OGC Ethics engages in a variety of activities, including:

- DEO Ethics Training- OGC Ethics prepares and makes available the DEO Training course, a web-based course designed to help DEOs and ADEOs in carrying out their ethics-related duties.
- Monthly Meetings with DEOs and ADEOs- OGC Ethics hosts monthly meetings for EPA DEOs and ADEOs to discuss ethics issues and programmatic concerns.
- Ethics Training Material- OGC Ethics prepares and distributes the initial ethics orientation and online annual ethics training materials for use by all EPA offices.
- National Ethics Program Tracker Database- OGC Ethics created the National Ethics Program Tracker Database to assist ethics officials in maintaining an ethics file for each employee. The database allows ethics officials to track employee completion of initial ethics orientation and annual ethics training, the status of confidential financial disclosure reports and outside activity requests, and other related ethics documents, such as waivers and recusals.

³ Despite being ultimately responsible for the EPA ethics program, the DAEO does not have supervisory authority over the majority of DEOs or ADEOs.

- Assistance Visits- OGC Ethics visits individual EPA offices to provide assistance in the management of the ethics program.
- Counseling and Training as needed- OGC Ethics provides ethics advice and counseling and specialized training directly to employees, managers, DEOs and ADEOs throughout headquarters, the regions, and laboratories.
- Self-Assessments- OGC Ethics included a voluntary survey at the end of the online annual ethics training it provided in 2015. Among other things, employees were asked to rate the training and provide feedback on the ethics topics about which they would like more information. The majority of the respondents (69%) rated the training as very good or excellent.

Ethics Program Staffing Concerns

As noted above, OGC Ethics--the EPA headquarters ethics office--currently consists of the DAEO, the ADAEO, and two full-time and two part-time ethics officials. While DEOs assist in administering portions of the ethics program throughout the agency, OGC is concerned that OGC Ethics may be insufficiently staffed to ensure the long-term effectiveness of EPA's ethics program. At the very least, OGC is concerned that at current staffing levels, OGC Ethics may not be able to absorb the impact of any staffing changes, such as medical leave or retirement, or any unforeseen events. Additional responsibilities or priorities may stretch existing resources even further. Moreover, the effective administration of certain elements of the ethics program relies largely on the competency of the DEOs who are not directly supervised by OGC Ethics. Again, OGC is concerned that OGC Ethics staffing may be insufficient to provide the DEOs with continuous oversight and necessary guidance and training.

Financial Disclosure

Title I of the Ethics in Government Act requires that agencies administer public and confidential financial disclosure systems. Financial disclosure serves to prevent, identify, and resolve conflicts of interest by providing for a systematic review of the financial interests of officers and employees. The financial disclosure process also offers an opportunity for ethics officials to provide ethics-related counseling to report filers.

To evaluate EPA's financial disclosure systems, OGC evaluated the required written procedures for administering the systems and a sample of public and confidential financial disclosure reports that were required to be filed at EPA Headquarters in 2015. OGC evaluated the selected samples for timeliness of filing, review, and certification, as well as for the overall quality of review.

Financial Disclosure Written Procedures

Each executive branch agency must establish written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available financial disclosure

reports filed by the agency's officers and employees.⁴ At the time of OGE's review, EPA had not updated its formal written procedures for its public financial disclosure system to address its migration to *Integrity*, the OGE-developed, executive branch-wide electronic filing system. EPA, an early adopter, had assisted OGE in pilot testing the initial *Integrity* roll-out. During the review, OGE provided OGC Ethics with samples of written procedures to assist in updating EPA's procedures. Subsequently, OGC Ethics finalized and provided OGE with a copy of written procedures for the administration of its public financial disclosure system, dated October 2016.

With regard to the confidential financial disclosure procedures, EPA Ethics Advisory 2009-02 covers the administration of the confidential disclosure system and EPA Ethics Advisory 2008-02 covers the collection and review of EPA Form 3110-48, which is an OGE-approved alternative financial disclosure form filed by EPA special Government employees (SGE).

Administration of the Public Financial Disclosure System

OGC Ethics is responsible for the administration of the EPA public financial disclosure system agency-wide and uses its Form 278 Tracker database as well as *Integrity* to assist in managing the program. Each year, OGC Ethics collects, reviews, and certifies over 400 public financial disclosure reports.

Collection and Review of Public Financial Disclosure Reports

In 2015, EPA was in the midst of implementing the executive branch-wide filing system, *Integrity*, for public reports of Presidential nominees and appointees to positions requiring Senate confirmation (PAS). Beginning in January 2016, all EPA public filers were required to file through *Integrity* unless there was an exceptional circumstance (e.g., the filer was terminating government service in 2016). As noted above, all public reports are reviewed and certified by OGC Ethics.

OGE's Examination of Public Financial Disclosure Reports

To evaluate the timeliness of public financial disclosure filing and certification, OGE examined a sample of 25 new entrant, 25 annual, and 26 termination reports that were required to be filed at EPA in 2015. Table 2 below depicts the results of OGE's review.

⁴ See Section 402(d)(1) of the Ethics in Government Act.

Table 2. OGE's Examination of Public Financial Disclosure Reports

	New Entrant		Annual		Termination		Total	
Reports Examined	25		25		26		76	
Filed Timely	20	(80%)	21	(84%)	21	(81%)	62	(82%)
Certified Timely	23	(92%)	20	(80%)	26	(100%)	69	(91%)

As indicated in Table 2 above, the vast majority of the public reports OGE examined were filed and certified timely. In addition, based on OGE's examination, it appears that OGC Ethics officials conducted a thorough review of the reports. For example, the report files contained notes from ethics officials documenting their requests for additional information from filers. Additionally, ethics officials routinely provided cautionary letters to filers to address potential conflicts of interest identified during ethics officials' review of the reports.

Administration of the Confidential Financial Disclosure System

DEOs and ADEOs collect, review, and certify the confidential reports for their respective offices. In 2015, approximately 8,200 confidential reports were filed EPA-wide. EPA utilizes the National Ethics Program Tracker Database (NEPT) to administer the confidential financial disclosure system. NEPT alerts confidential filers of their filing requirement and notifies them when their completed reports are received by ethics officials. NEPT is available for use by all DEOs; however, its use is not mandatory and some offices have chosen to use their own tracking systems.

Collection and Review of Confidential Financial Disclosure Reports

DEOs and ADEOs collect the paper confidential financial disclosure reports and are responsible for retaining them as appropriate. OGE found that some offices kept the confidential reports beyond the-six year retention period.

Recommendation

1. Ensure that confidential financial disclosure reports are not maintained beyond the six-year retention period.

OGE's Examination of Confidential Financial Disclosure Reports

Confidential reports generally undergo an intermediate review by the ADEOs and are then are certified by the DEOs at the filers' respective offices.⁵ To evaluate the confidential financial disclosure system at EPA headquarters, OGE examined a sample of 32 new entrant and 195 annual reports that were required to be filed in 2015 by headquarters employees. Tables 2.1 and 2.2 below depict the results of OGE's examination.

⁵ Some offices, such as OGC and ORD's Office of Science Policy, do not conduct an intermediate review.

Table 2.1 OGE’s Examination of Headquarters Confidential Financial Disclosure Reports

	New Entrant		Annual		Total	
Reports Examined	32		195		227	
Filed Timely	11	(34%)	168	(86%)	179	(79%)
Certified Timely	27	(84%)	141	(72%)	168	(74%)

Table 2.2 OGE’s Examination of Headquarters Confidential Reports by Main Headquarters Office

Office	Sampled Reports		Filed Timely		Certified Timely	
Total	227		179	(79%)	168	(74%)
OA	49		43	(88%)	27	(55%)
OAR	43		28	(65%)	41	(95%)
OECA	32		23	(72%)	21	(66%)
OCSPP	24		22	(92%)	21	(88%)
OLEM	33		23	(70%)	21	(64%)
ORD	46		40	(87%)	37	(80%)

As indicated in Table 2.1 above, OGE could only verify that 11 (34%) of the new entrant reports examined were filed timely.⁶ Of the annual reports OGE examined, 168 (86%) were timely filed.

In order to determine the certification timeliness of the reports examined, OGE used either the date entered in the “Agency’s Final Reviewing Office” field of the OGE Form 450 or, if this field was empty, the date entered in the “Signature and Title of Supervisor/Other Intermediate Reviewer” field, in accordance with OGE Program Advisory PA-11-04. Using this procedure, OGE determined that only 74% of all confidential reports examined—both new entrant and annual—were timely certified.

With regard to the certification of confidential reports, EPA should be aware of the recent changes regarding the review of the OGE Form 450 per the Confidential Financial Disclosure Guide re-issued by OGE in August 2016. In particular, Section 3, p. 41-42 reads:

A reviewer certifies the report by signing and dating the cover page of the OGE Form 450 in the field labeled “Signature and Title of Agency’s Final reviewing Official.” ...There is no general requirement that a filer’s supervisor or any intermediate official examine or review the report.

⁶ OGE could not determine the filing timeliness of another five new entrant reports, as the filers did not indicate their appointment dates on the report.

This change is of particular note for EPA because 31 of the reports that OGE counted as having received timely certification did not have a signature or date in the “Signature and Title of Agency’s Final reviewing Official” field. These reports would be considered to have been uncertified under the new standard specified in the re-issued Confidential Financial Disclosure Guide.⁷ Consequently, OGE reminds EPA that certifying officials must now sign and date using the “Signature and Title of Agency’s Final reviewing Official” field of the OGE Form 450 in order to properly certify the report.

Finally, OGE’s examination of the sample of confidential reports found that the review of the reports by DEOs and ADEOs requires improvement. OGE found that 114 out of 227 confidential reports had at least 1 technical reporting error.

Recommendations

2. Ensure that new entrant confidential reports are filed timely.
3. Ensure that all confidential reports are certified timely.
4. Implement corrective action to improve the review of confidential reports in order to eliminate technical errors.

As noted previously, EPA’s program is decentralized and, as such, the collection, review, and certification of the confidential reports has been delegated to DEOs and ADEOs at the individual EPA offices. The DEOs and ADEOs carry out this responsibility as an ancillary duty. While OGC Ethics acknowledged its ultimate responsibility to oversee the administration of the confidential system, the investment of more time and energy into directing the DEOs and ADEOs on how to carry out their obligations will necessarily come at the expense of something else. With this in mind, OGE again expresses its concern regarding the seemingly insufficient staffing of OGC Ethics.

Education and Training

An ethics training program is essential to raising awareness among employees about the ethics laws and rules that apply to them and the availability of agency ethics officials to provide ethics counseling. Each agency’s ethics training program is required to include at least an initial ethics orientation for all new employees and annual ethics training for covered employees.⁸

To meet initial ethics orientation (IEO) requirements, all new agency employees must receive ethics official contact information along with the following material within 90 days of beginning work: (1) the Standards of Conduct for Employees of the Executive Branch (Standards of Conduct) and any agency supplemental standards of conduct to keep or review; or (2) summaries of the Standards of Conduct, any agency supplemental standards of conduct, and the

⁷ These reports consisted of all new entrant reports OGE examined from OAR’s Office of Atmospheric Programs, all annual reports from OCSP’s Office of Science Coordination and Policy, and 9 out of the 10 annual reports OGE examined from OA’s Office of Sustainable Communities in the Office of Policy.

⁸ See 5 C.F.R. §§ 2638.704 and 705 for definition of covered employees.

Principles of Ethical Conduct (Principles) to keep. Employees must receive one hour of official duty time to review the material.⁹

To meet the annual ethics training requirements, covered employees must receive annual training consisting of a review of: (1) the Principles; (2) the Standards of Conduct; (3) any agency supplemental standards of conduct; (4) the criminal conflict of interest statutes; and (5) ethics official contact information. Training length and delivery method may vary by an employee's financial disclosure filing status.¹⁰

Initial Ethics Orientation

To meet the initial ethics orientation requirement, an OGC Ethics official attends the headquarters new employee orientation, which is typically held every two weeks, to provide a brief ethics presentation. The OGC Ethics official also provides the new employees a brochure with ethics officials' contact information and references to ethics resources on the EPA intranet. The OGC Ethics official also directs employees to take the online course, "Essential Ethics for New EPA Employees." This course covers the Standards of Conduct, the Principles, the criminal conflict of interest statutes, and EPA's supplemental standards of conduct.

Deputy Ethics Officials track completion of the online initial ethics orientation course through a database that generates certificates upon completion. EPA reported that in 2015, 94% of the employees required to receive initial ethics orientation had received it within 90 days of being hired.

Annual Ethics Training

EPA provided its public and confidential financial disclosure report filers with one hour of official time to complete an online training course titled, "Other People's Money: Fundraising" to meet their annual ethics training requirement in 2015. OGE determined that this course met the regulatory requirements for annual training.

EPA uses its online database to record completion of annual ethics training. For 2015, EPA reported that 10,694 (99%) of 10,737 covered employees received annual training.

Additional Training

EPA periodically provides ethics training beyond the required initial ethics orientation and annual ethics training. For example, approximately every two years, EPA hosts an SES Forum in the Washington, DC area for all of its senior leaders. Included in the event is a one-hour ethics presentation conducted by OGC Ethics.

Additionally, EPA provides a variety of post-employment training for departing employees. For example, the ADAEO routinely provides post-employment briefings to political appointees who are leaving government service. OGC Ethics has also developed an online

⁹ See 5 C.F.R. § 2638.703.

¹⁰ See 5 C.F.R. §§ 2638.704 and 705.

training course titled, “Leaving the Federal Service.” Finally, OGC Ethics distributes to departing employees “Departure Guides” that cover post-employment restrictions and ethics obligations they should consider when seeking employment.

Advice and Counseling

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and Standards of Conduct matters, including post-employment matters, is developed and conducted.¹¹ The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program.¹²

OGC Ethics provides advice to appointees, nominees, and public filers. OGC Ethics also provides advice to DEOs, ADEOs, managers and employees. DEOs and ADEOs provide advice and counseling to their employees but, especially in headquarters, consult with OGC Ethics.

According to the ADAEO, OGC Ethics receives dozens of ethics-related questions each week. She added that her office makes every effort to provide helpful, creative, and customer oriented advice in response to the questions.

To evaluate OGC Ethics’ advice and counseling program, OGE reviewed a sample of the guidance provided in 2015, which addressed conflicts of interest, gifts, attendance at widely attended gatherings, outside activities, EPA’s supplemental standards, impartiality, and post-government employment. OGE determined that this guidance was provided timely and was accurately supported with references and citations to statutory and regulatory criteria.

Agency-Specific Ethics Rules

An agency may modify or supplement the Standards of Conduct, with the concurrence of OGE, to meet the particular needs of that agency.¹³ A supplemental standards of conduct regulation is issued jointly by the agency and OGE and is published in title 5 of the Code of Federal Regulations.

EPA has supplemental standards of conduct¹⁴ which prohibit employees from designated offices or who perform certain functions from having outside employment with or holding certain financial or other interests in particular companies, industries, or operations.¹⁵ EPA’s supplemental standards of conduct also requires employees to receive approval from their DEO before engaging in outside employment that involves:

- consulting services;
- the practice of a profession as defined in the Standards of Conduct;
- holding State or local public office;

¹¹ See 5 C.F.R. § 2638.203.

¹² See 5 C.F.R. § 2638.204.

¹³ See Executive Order 12674 and 5 C.F.R. § 2635.105.

¹⁴ See 5 C.F.R. part 6400.

¹⁵ According to the Alternate DAEO, these provisions currently apply to only two EPA offices: the Office of Mobile Sources and the Office of Pesticide Programs.

- subject matter that deals in significant part with the policies, programs or operations of EPA or any matter to which the employee presently is assigned or to which the employee has been assigned during the previous one-year period; or
- the provision of services to or for an EPA contractor or subcontractor, the holder of an EPA assistance agreement or sub agreement, or a firm regulated by the EPA office or region in which the employee serves.

OGE's examination of the sample of financial disclosure reports did not reveal any filers holding financial interests prohibited by the EPA's supplemental standards of conduct. Additionally, as part of its review of EPA's advice and counseling program, OGE identified several written approvals for employees to engage in outside employment activities. These approvals appeared to be granted in compliance with the requirements of EPA's supplemental standards. Furthermore, OGE identified 31 outside employment activities disclosed in the public financial disclosure reports OGE examined to determine whether the approvals were documented. Of the 31 activities, only 6 were of a nature that would require prior approval under EPA's supplemental standards of conduct. In all six cases, OGE verified that ethics officials had provided approval documentation for them.

OGC Ethics officials indicated that it is rare that an outside activity is not approved. EPA's supplemental regulations do not include any outright prohibitions of outside activity for any type of profession or employee. When ethics officials identify an outside activity on a public financial report, they advise employees about the ethics implications, such as misuse of position and representational conflicts of interest, and encourage them to formally request approval from the employee's DEO if the approval documentation is not available during the review of the report.

Conflict Remedies

The criminal conflict of interest law prohibits an employee from participating in an official capacity in a particular matter in which he or she has a financial interest.¹⁶ Congress included two provisions that permit an agency to issue a waiver of this prohibition in individual cases. Agencies must consult with OGE, where practicable, prior to issuing such a waiver.¹⁷ In 2015, OGC Ethics issued four waivers and consulted with OGE on each one.

Additionally, the Ethics in Government Act expressly recognizes the need for PAS nominees to address actual or apparent conflicts of interest by requiring written notice of the specific actions to be taken in order to alleviate the conflict of interest,¹⁸ commonly known as an "ethics agreement." There was no need to for an EPA PAS nominee to enter into an ethics agreement during 2015.

¹⁶ See 18 U.S.C. § 208.

¹⁷ See Executive Order 12674.

¹⁸ See 5 U.S.C. app. § 110.

Enforcement

For 2015, EPA reported no disciplinary actions based wholly or in part upon violations of the criminal conflict of interest statutes. However, EPA reported eight actions based on violations of the Standards of Conduct.

EPA's Office of Inspector General (OIG) conducts investigations of potential violations of the criminal conflict of interest statutes and makes any necessary referrals to the Department of Justice (DOJ). OIG concurrently notifies OGE of any such referrals. In 2015, EPA referred three violations to DOJ and OGE received concurrent notification in each case.

Special Government Employees

A special Government employee (SGE) is an officer or employee of the executive or legislative branch retained, designated, appointed, or employed to perform official duties, full-time or intermittently, for not more than 130 days in any 365-day period.¹⁹ SGEs generally serve as members of Federal Advisory Committee Act (FACA) committees or as individual experts and consultants. EPA utilizes the services of both types of SGEs. As part of this review, OGE evaluated the ethics services provided to both types of SGEs.

FACA Committee SGEs

EPA maintains 22 FACA committees. OGE evaluated the ethics services provided to SGE members of a sample of 9 committees, consisting of:

Two Office of the Administrator committees

- OPEEE's National Environmental Education Advisory Council (OPEEE/NEEAC)
- Science Advisory Board and the Clean Air Scientific Advisory Committee (SAB/CASAC)

Two Office of Research and Development committees

- Human Studies Review Board (OSA/HSRB)
- Board of Scientific Counselors Federal Advisory Committee (OSP/BOSC)

One Office of Chemical Safety and Pollution Prevention committee

- Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA)

¹⁹ See 18 U.S.C. § 202(a).

Four Science Advisory Board subcommittees

- Biogenic Carbon Emissions Panel
- Chemical Assessment Advisory Committee Augmented for Review of the Draft IRIS Benzo[a]pyrene Assessment (CAACA IRIS Benzo)
- Drinking Water Committee
- Technological Achievement Awards Committee-2015 (STAA)

OGE's review determined that six of these nine committees are effectively providing ethics services for their SGE committee members. However, improvements in the administration of the confidential financial disclosure and/or ethics training programs of three committees are required.

Confidential Financial Disclosure

In accordance with OGE's financial disclosure regulation, executive branch SGEs are required to file a new entrant confidential financial disclosure report within 30 days after their entry-on-duty date. They must also file a new financial disclosure report each year upon reappointment or re-designation. These reports must be filed before any advice is rendered by the SGE and in the case of FACA committee SGEs, before the first committee meeting.²⁰ In an effort to enforce these requirements, EPA requires that a FACA committee SGE must have filed a financial disclosure report within one year of a meeting date or activity.²¹

As allowed by OGE regulation,²² FACA committee SGEs at EPA file the EPA Form 3110-48, an OGE-approved alternative financial disclosure form, in lieu of the OGE Form 450. The alternative form collects targeted financial disclosure and outside activity information most relevant for EPA to identify potential conflicts of interest among FACA committee SGEs. DEOs and ADEOs are primarily responsible for reviewing and certifying these reports, although in some instances committee Designated Federal Officers (DFOs) are also involved in the review.

To evaluate EPA's confidential financial disclosure system for FACA committee SGEs, OGE examined a sample of the reports filed at each committee included in its review. The sample of reports OGE examined were generally reviewed and certified timely. However, OGE identified deficiencies in the confidential systems at three of the committees it examined.

First, OGE could not determine the filing timeliness of the five OPEEE/NEEAC financial disclosure reports it examined because the reports did not have any indication of the date they were received at EPA. Moreover, none of these reports had been reviewed or certified. OGC Ethics officials stated that out of concern regarding the management of the committee's ethics program, they had already appointed a new DEO for OPEEE in the spring of 2016, and that new DEO is one of the OGC Ethics officials.

²⁰ See 5 C.F.R. § 2634.903(b).

²¹ See EPA Ethics Advisory 2008-02.

²² See 5 C.F.R. § 2634.905(a).

Second, at OSA/HSRB, OGE requested to examine seven EPA Forms-3110-48 required to be filed in 2015. Of the seven forms provided, only four were filed in 2015. Of the remaining three, two were filed in 2014 and one was filed in 2013. Despite their failure to file in 2015, OGE determined that the two SGEs who filed 2014 had, at a minimum, filed within the previous 12 months of the first meeting they attended in 2015, in accordance with EPA Ethics Advisory 2008-02. However, the SGE whose most recent EPA 3110-48 was filed in December 2013 attended one meeting in late 2014 and two meetings in 2015, all three of which were more than 12 months after the report was filed.

Finally, at OSP/BOSC, OGE requested to examine eight EPA Forms-3110-48 required to be filed in 2015. However, only two of the forms provided were filed in 2015. Four forms were filed in 2014 and two were filed in 2013. OGE determined that all six the SGEs who filed in 2013 or 2014 participated in meetings in 2015 without having filed an EPA Form 3110-48 within the previous 12 months.

Ethics Training

OGE determined that the vast majority of SGEs serving on FACA committees included in OGE's review had received ethics training in 2015. However, OGE found that only 1 (20%) of 5 OPEEE/NEEAC SGEs included in OGE's review received the training in 2015. Moreover, at OSP/BOSC, only 5 (50%) of 10 filers whose financial disclosure reports were originally requested for review received ethics training.

Recommendations

5. Implement corrective action to ensure that confidential financial disclosure reports required from SGE members of OPEEE/NEEAC, OSA/HSRB and OSP/ BOSC are timely filed and certified. Also ensure that systems are in place to ensure that all FACA committee SGEs EPA-wide are timely filed and certified.
6. Implement corrective action to ensure that all SGEs serving OPEEE/NEEAC and OSP/BOSC receive ethics training. Also ensure that systems are in place to ensure that all FACA committee SGEs EPA-wide receive the required training.

Expert and Consultant SGEs

In order to evaluate the ethics services provided to non-FACA committee SGE experts and consultants, OGE identified 35 SGEs serving as experts and consultants in 3 of the Office of Research and Development (ORD) offices selected for review:

- Immediate Office (IOAA)
- Western Ecology Division of the National Health and Environmental Effects Research Laboratory (NHEERL/WED)
- Water Supply and Water Resources Division of the National Risk Management Research Laboratory (NRMRL/WSWRD)

Confidential Financial Disclosure

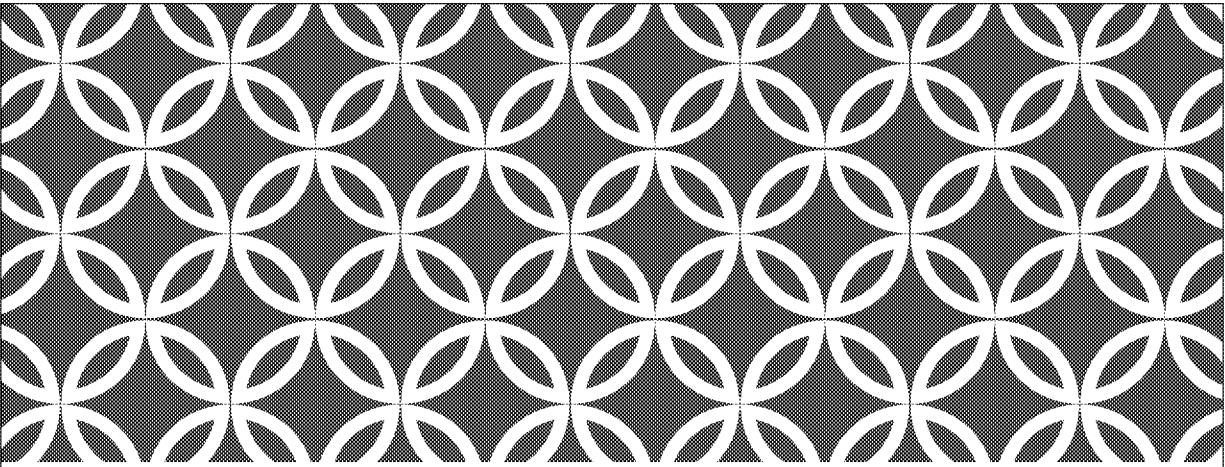
OGE determined that only two of the offices included in its review, NHEERL/WED and NRMRL/WSWRD, collected and reviewed financial disclosure reports from their SGEs. IOAA did not collect financial disclosure reports in 2015. Of the 3 reports OGE examined from NHEERL/WED, 2 (67%) were filed timely and all of the reports were certified timely. However, of the 4 reports examined from NRMRL/WSWRD, only 2 (50%) were filed and certified timely.

Ethics Training

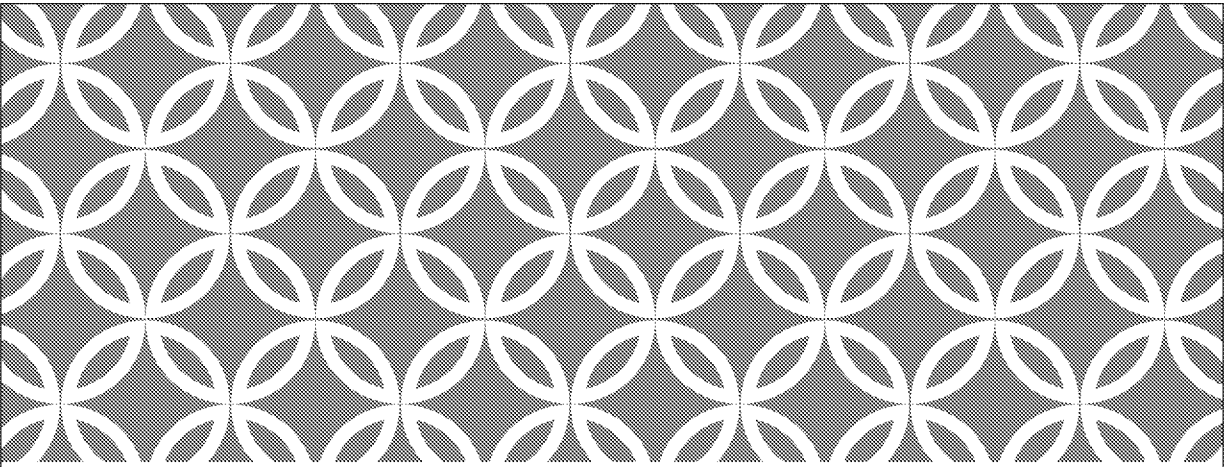
None of the three ORD offices could provide evidence that ethics training was provided to their expert and consultant SGEs in 2015.

Recommendations

7. Ensure that ORD IOAA undertakes efforts in concert with OGC Ethics to strengthen the administration of the ethics services provided to its expert and consultant SGEs.
8. Ensure that all expert and consultant SGEs EPA-wide receive ethics training.

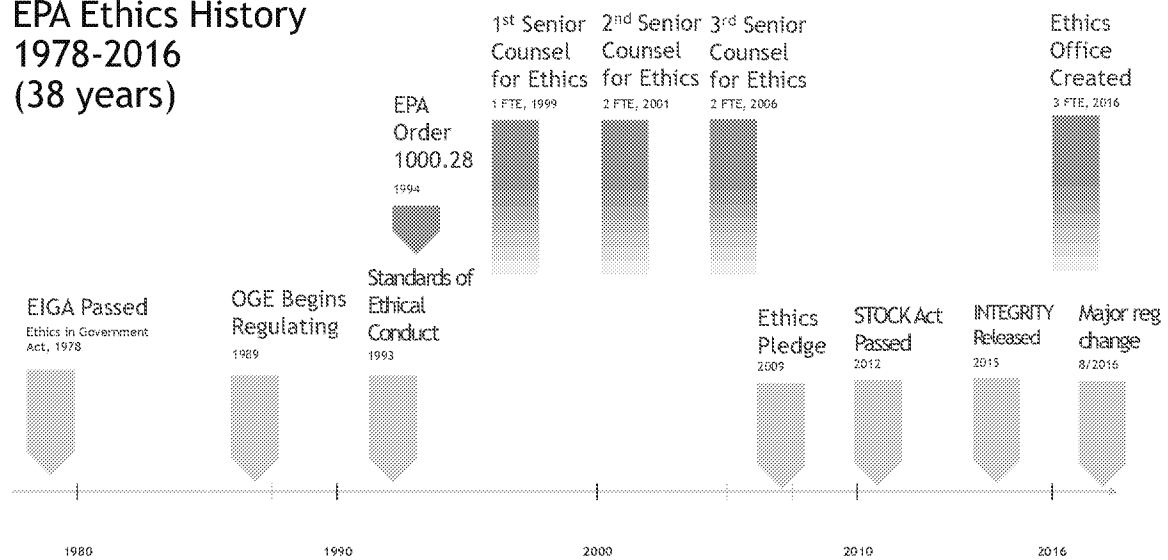


OGC ETHICS OFFICE

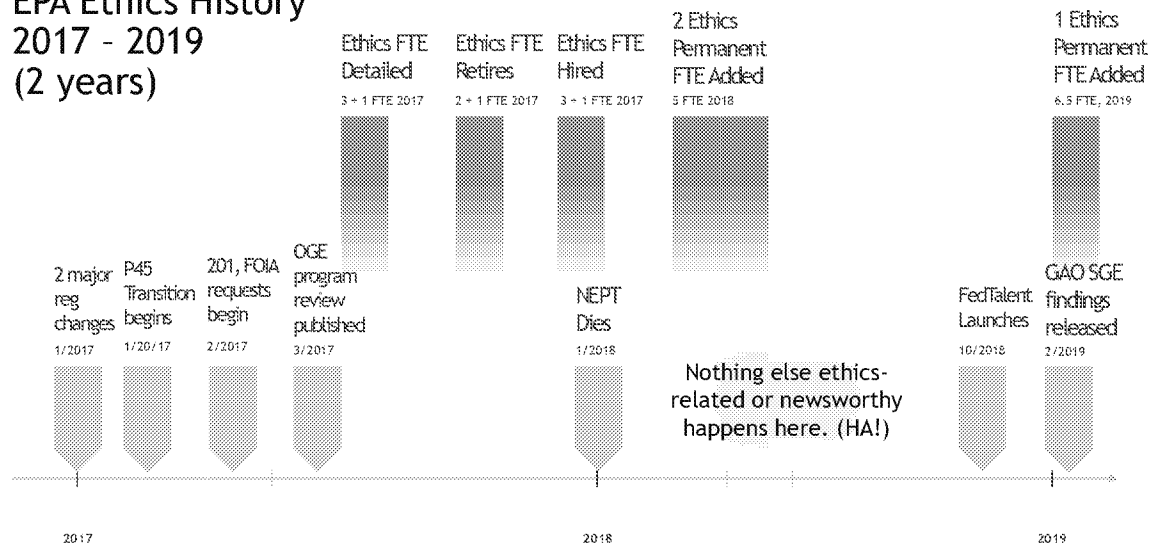


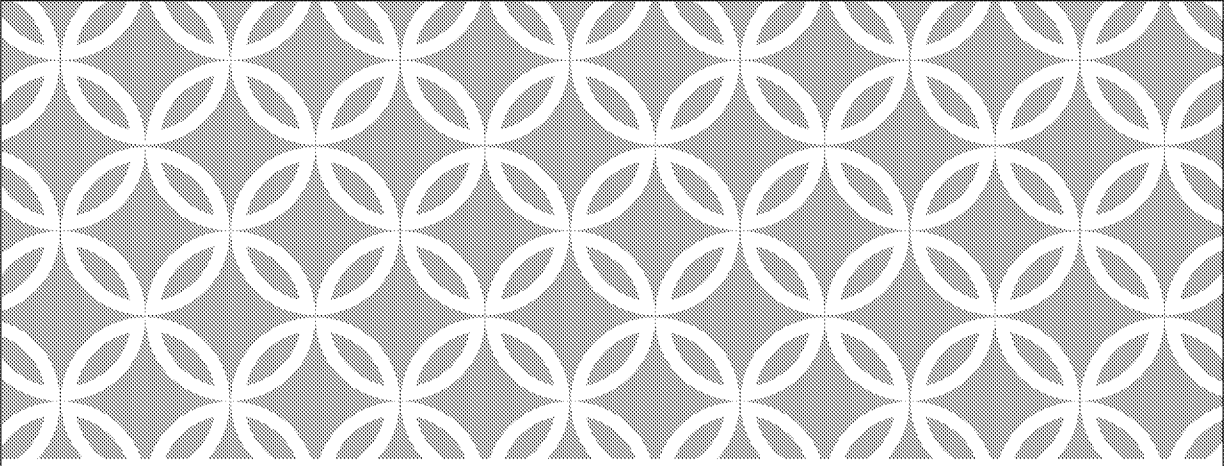
HISTORY

EPA Ethics History 1978-2016 (38 years)



EPA Ethics History 2017 - 2019 (2 years)





Today |

THE ETHICS PROGRAM: PERCEPTION V. REALITY

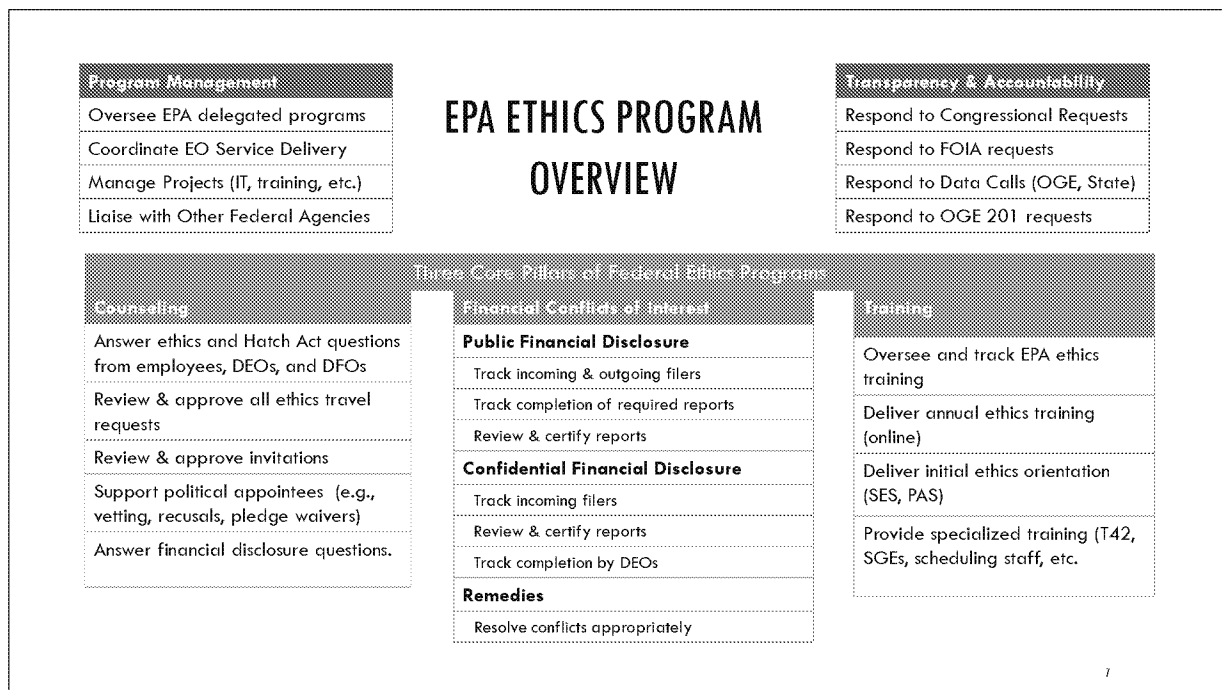
Just waiting around until a counseling call comes in.



v.

Managing a program with lots of people and moving pieces.





This is the EPA program function. The key aspects of this program are see at the bottom in light blue. There are three core pillars of any federal ethics program: Training, Counseling, and Preventing Financial conflicts of interest. In addition to these three key pillars, we have additional duties to communication with parties outside the EPA about the Ethics program (Transparency and Accountability), and to do normal office management as well as overseeing those portions of the program that are delegated to Deputy Ethics Officials.

Program Management	Under the Hood in 2018	Transparency & Accountability
Outreach & Education Effort (regions, HQ)		Congressional Oversight Requests - 34
New online Ethics travel form		OGE 201 Requests – 31 (506 released)
Electronic 450 filing project		FOIA Requests – 99 (Closed 95; Open 45)
LEAN measure for OGC		6 FOIAs in Litigation + 2 Other Litigations
New ethics Intranet site in SharePoint		
Counseling	Financial Conflicts of Interest	Training
658 ethics travel approvals (\$843k in discretionary \$)	Annual 278e reports - 353	In Person - 300 people
33 Recusal Statements	Periodic transaction reports - 247	Annual Online - 9983 people
17 Impartiality Decisions	New Entrant reports - 85	Technical support for FedTalent
Vetting and counseling appointees	Termination reports - 60	Specialized Training (e.g., Scheduling & Invitations, SGEs)

This is what we did over the course of 2018...and of course it doesn't measure counseling phone calls,

ETHICS OFFICE LEADERSHIP



David Cozad

- Acting, Designated Agency Ethics Official
- Regional Counsel, Region 7



Justina Fugh

- Alternate Designated Ethics Official
- Director, Ethics Office
- Senior Counsel for Ethics

ETHICS OFFICE STAFF



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• Ethics
Attorney



Jeanne
Duross

• Ethics
Attorney



Shannon
Griffo

• Ethics
Attorney



Jennie
Keith

• Ethics
Officer



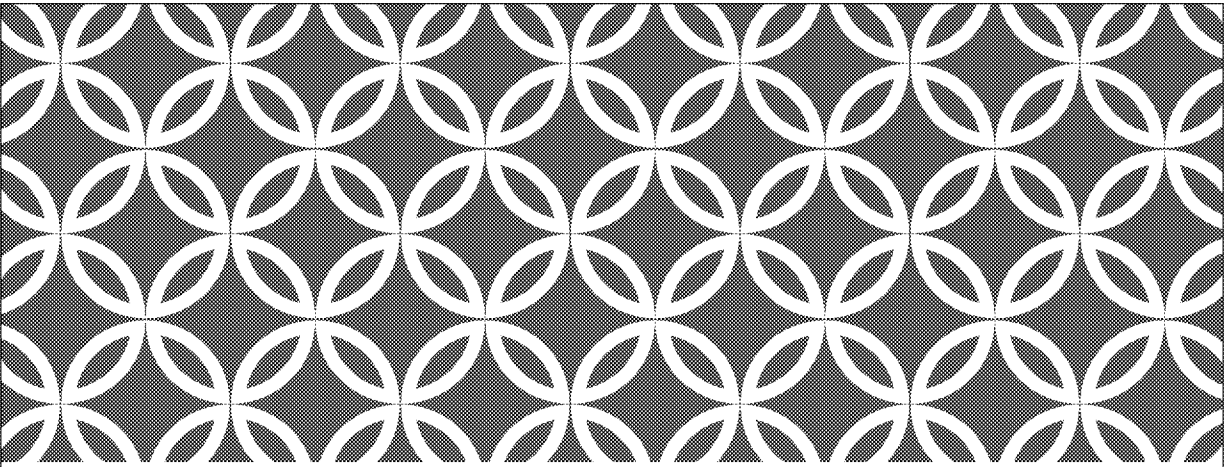
Margaret
Ross

• Ethics
Officer



New Senior
Ethics
Attorney

Handout will contain detailed information



FUTURE |

WHAT WE'RE SEEING

Increased external scrutiny

- Sophistication about ethics issues in the general public and press
- More FOIA requests, 201 requests, Congressional inquiries
- OSC, GAO and OGE oversight

Increased complexity of ethics issues

- STOCK Act
- Lobbying Gift Ban and other pledge issues
- Revolving Door between States and EPA
- Need for consistency in ethics advice across the Agency

WHERE WE'RE GOING: PROGRAM OVERSIGHT

Improving Program Oversight

- Implementing OGE and GAO Recommendations
- Exercising regulatory audit responsibilities

Updating Ethics Knowledge Base

- Revising ethics advisories, EPA Order 1000.28, and EPA supplemental regulations
- Undertaking technological improvements to existing Ethics SharePoint site

WHERE WE'RE GOING: TECHNOLOGY

Technology Improvements

- Electronic OGE 450 filing (Late 2019 launch for 2020 filing season)
- Electronic WAG determinations (2020 launch)
- Electronic EPA 3110-48 (2021 Launch)
- Electronic outside activity approvals (2021 launch)
- Online training tracking (we will overcome FedTalent)
- Implementation of knowledge base (exists in SharePoint, but constantly updating)

WHAT WON'T CHANGE...

Continued commitment to customer service!

ethics@epa.gov

202-564-2200



Appointment

From: Humphreys, Hayly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4F4A7B4AEAF143BF806B0DD5B7884324-HUMPHREYS,]
on behalf of Adm15Wheeler.Calendar [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=83F9AE79D99D4661AA37D687409C1993-ADM15WHEELE]
Sent: 3/7/2019 3:20:24 AM
To: Adm15Wheeler.Calendar [Adm15Wheeler.Calendar@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]
CC: Jackson, Ryan [jackson.ryan@epa.gov]
Subject: Meeting with Emory Rounds (Director of the Office of Government Ethics) and Chip Christopher (Deputy Director of Compliance)
Location: Administrator's Office
Start: 3/19/2019 6:30:00 PM
End: 3/19/2019 7:00:00 PM
Show Time As: Busy

Required Attendees: Adm15Wheeler.Calendar; Leopold, Matt (OGC); Fotouhi, David
Optional Attendees: Jackson, Ryan